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opinion

1958

December 26

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CONCORD, N.H.

Mr. James J. Barry, Commissioner
Department of Public Welfare
State House Annex
Concord, New Hampshire

Dear Mr. Barry:

This is in reply to your letter of December 17, 1958, in which you request our opinion as to whether the Department of Public Welfare has authority to impose by administrative regulation a requirement of one year's residence in New Hampshire as a condition for eligibility for Aid to Dependent Children where no such condition is imposed by statute. We answer in the negative.

The residence requirements imposed by the legislature as conditions for eligibility for the numerous public assistance programs administered by the Department of Public Welfare appear in RSA 167:6. It is significant that continuous residence in the state for one year immediately preceding application have been specifically imposed as a condition for eligibility for Old Age Assistance (167:6(a)-(c)) and aid to the permanently and totally disabled (167:6(f)) but has been omitted as a condition for eligibility for aid to the needy blind (167:6(d)) and aid to dependent children (167:6(e)) (supp). We believe that the legislature has thus clearly manifested its intent that residence for any specific period is not to be required as a condition for eligibility for aid to dependent children and that a child is entitled to such aid provided he meets the requirements of RSA 167:6(e)(supp). The legislative purpose is equally clear with respect to needy blind.

In considering your inquiry we were not unmindful of RSA 161:4 I which authorizes the Board of Public Welfare " . . . to make such rules and regulations . . . necessary or desirable to carry out the provisions of this chapter or RSA 167." In our view this language cannot be construed to authorize the imposition by administrative rule of substantive requirements for eligibility for public assistance. We believe such requirements can only be imposed by the legislature itself.

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Mr. James J. Barry, Commissioner

This State's program for aid to dependent children is financed in part by Federal contributions under the Social Security Act. If the legislature chooses to impose a requirement of one year's residence in A.D.C. cases it may do so without fear of this State losing any Federal grants provided the legislation which is done to accomplish such purpose does not impose " . . . as a condition of eligibility for aid to dependent children, a residence requirement which denies aid with respect to any child residing in the state (1) who has resided in the state for one year immediately preceding the application for such aid, or (2) who was born within one year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the state for one year immediately preceding the birth." See 42 U.S.C.A., s. 602b.

If we may be of any assistance in drafting legislation along these lines please do not hesitate to call on us.

Very truly yours,

George T. Ray, Jr.
Assistant Attorney General

GTR:lt